IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 253 OF 2006

1. Shri Pandurang Tukaram Ghude,
2. Shri Sudhakar Pandurang Ghude,
3. Shri Subhash Pandurang Ghude,
4. Shri Ashok Pandurang Ghude,
5. Shri Pundlik Tukaram Lihe. ...Applicants

V/s.

The State of Maharashtra. ...Respondents

Mr.M.S. Mohite with Ms.Shubhangi Kadam for Applicants.
Ms.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 1, 2006

P.C. :-

. Heard learned Counsel for the applicants and learned APP for the State.

. The applicants are arrested in connection with an offence which was registered with Murbad Police Station for the offence punishable under Sections 302, 201 read with Section 34 of the IPC vide C.R.No.I-203/2005.

2. The prosecution case is that deceased Ganesh was an orphan and was mentally retarded and was residing

with the applicants as a member of the family and was allowed to work and sleep in their hotel. He died on 15th July, 2005. Thereafter, he was buried in the field and the funeral was attended by 50-60 villagers. A complaint, however, was lodged with the police after seven days that deceased Ganesh had died under the suspicious circumstances. The police, therefore, exhumed the body and post mortem was performed. The Doctor reserved his opinion regarding the cause of death. However, he stated that the possibility of unnatural death was not ruled out. The matter was investigated by the police for about 4-5 months and the statements of various villagers were recorded.

3. Learned Counsel for the applicants submitted that in the statements of the witnesses which are recorded by the police, it is apparent that there is no direct evidence against the present applicants. He submitted that the complaint was filed by the complainant on account of political rivalry. He submitted that there was no motive for the commission of the said offence and the offence was registered only on

the basis of suspicion after seven days. He submitted that the deceased was an orphan and he was buried in the presence of about 50-60 villagers. He, therefore, submitted that this is a fit case where the applicants are entitled to be released on bail.

4. Learned APP, on the other hand, invited my attention to the papers of investigation which indicated that an in-camera statement of one witness is recorded who had stated that he had seen the applicants assault the deceased and he was strangulated and then his body was buried in the field. She submitted that other two witnesses had also given an in-camera statements who had revealed that the applicants used to assault the deceased very often. She submitted that these witnesses are not willing to come forward as the applicants have a political clout in the village. She further submitted that applicant no.3 had criminal antecedents and he was involved in an offence which was punishable under Section 354 of the IPC.

5. I have considered the submissions made by the

learned Counsel for the applicants and learned APP for the State. In the present case, the complaint has been lodged after seven days and thereafter, the body was exhumed from the place where the deceased was buried. The post mortem report does not indicate the probable cause of death and the viscera has been sent for C.A., however, the report has not been received so far. The deceased was buried in the presence of about 50-60 villagers, none of the villagers had filed the complaint. The deceased was residing with the applicants as a member of the family though he was a orphan. The statement of the alleged witness is recorded as in-camera statement reveals that it was recorded on 26th December, 2005 i.e. almost after a lapse of six months. The other two witnesses whose statements were recorded as in-camera statements, also have not witnessed the incident but were informed that the deceased had died under suspicious circumstances. Taking into account the fact that there is no direct evidence in the present case and that since the Doctor who performed the post mortem has not given a clear opinion that the death of the deceased was unnatural,

and the fact that there is no direct evidence in the present case, in my view, this is a fit case where the applicants are entitled to be released on bail. The in-camera statements have been recorded almost after six months and therefore, it is not safe to rely on these statements particularly when there are two groups in the village and there is political rivalry between the two groups. In view of all the circumstances, the applicants have made out a case for grant of bail.

6. The applicants, therefore, be released on bail in the sum of Rs.10,000/- each with one or two sureties in the like amount. They shall not enter the jurisdiction of Murbad Police Station for a period of two weeks. They shall report to Shahapur Police Station once in a week for a period of two weeks and thereafter, twice in a month at Murbad Police Station.

. The application is allowed in the above terms.

(V.M. KANANDE, J.)